

EX PARTE OR LATE FILED



Industrial Telecommunications Association, Inc.

April 4, 1998

Ms. Magalie Roman Salas:  
Secretary  
Federal Communications Commission  
1919 "M" Street, N.W.  
Washington, D.C. 20554

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APR 3 - 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: Ex Parte PR Docket 92-235**

Dear Ms. Salas:

This letter serves to notify the Commission that attached letter was submitted to Paul Misener, Esq., Chief of Staff to Commissioner Harold Furchtgott-Roth. Because the attached letter addresses unresolved issues in the above captioned proceeding, I respectfully request that it be included in the record of that proceeding.

If you have any questions or comments related to this filing, please do not hesitate to contact me at your convenience.

Cordially,

A handwritten signature in black ink, appearing to read 'John Kneuer', followed by a long horizontal line.

John Kneuer  
Executive Director, Government Relations

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List ABCDE

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Telephone Maintenance Frequency  
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Communication Suppliers

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Paul Misener, Esq.  
Chief of Staff  
Office of Commissioner Harold Furchtgott-Roth  
1919 "M" Street, N.W., Room 802  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: PR Docket No. 92-235**

Dear Mr. Misener:

Thank you for taking the time to meet with Mark and me on the March 24, I know you are very busy. I would like to take this opportunity to follow-up with you on some of our conversation, specifically, the resolution of outstanding "refarming" issues and your request that ITA consider the Commission's regulations in light of Section 11 of the Telecommunications Act.

As we discussed, the most pressing outstanding issue in the refarming proceeding is the resolution of the narrowband offset channels in the 450-470 MHz band. These offset channels are to be licensed for spectrally-efficient narrowband systems, but are currently occupied by low power licensees. Because the Commission has yet to implement procedures for the migration of these low power licensees, the refarming proceeding has essentially come to a halt. Consequently, the freeze on applications for licenses on the 450-470 MHz offsets has become indefinite.

To address the needs of these low power licensees, the Commission directed the several frequency advisory committees to propose a plan for the accommodation of low power systems in the post-refarming environment, and declined to codify the basic elements of such a plan once submitted to the FCC. The Commission reasoned that *"this approach provides the frequency coordinators, who have knowledge of user requirements and local conditions, with maximum flexibility in the management of the PLMR spectrum."*<sup>1</sup>

On June 4, 1997, the LMCC submitted to the Commission a "Low Power Pool Consensus Plan" ("Consensus Plan") that designated channels in the 450-470 MHz band for the exclusive use of low power operations. In addition, the Consensus Plan relaxed certain restrictions on low power operations, i.e. some channels would support 5 watt systems (as opposed to the current 2 watt

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<sup>1</sup> *Second Report and Order*, ¶ 45.

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restriction), some channels would be available on a nation-wide basis, some channels would support itinerant systems.

Because the added flexibility in the Consensus Plan conflicts with explicit restrictions on low power use found at Section 90.267 of the Commission's rules, the conventional wisdom has been that full implementation of the Consensus Plan requires the issuance of a *Further Notice of Proposed Rule Making*. However, a close reading of the *Second Report and Order* suggests that it is within the authority of the Commission to fully implement the Consensus Plan without a further rule making proceeding.

Because the Commission directed the Coordinators to develop a low power consolidation plan, the plan itself may be accurately characterized as the "logical outgrowth" of the *Second Report and Order*. However, when the Commission modified Section 90.267 of its rules it failed to remove the restrictions on low power operation found at sections 90.267(a)(3) and (4). If the Commission were to now issue an *Errata* removing those sections, the Coordinators could coordinate new low power applications under the authority delegated to them by Section 90.175 and 90.267 of the Commission's rules.

Section 90.267 states that the coordinators may designate any regularly assignable frequency in the 450-470 MHz band as low power, and that assignments for such channels are subject to the frequency coordination requirements of Section 90.175. Section 90.175(b) states: "The coordinators recommendation may include comments on *technical factors such as power, antenna height and gain, terrain, and other factors* which may serve to minimize potential interference." <sup>2</sup> [emphasis added]

The resolution of the "low power problem" is a prerequisite to the increased access to spectrum that the refarming proceeding promises. By employing spectrally-efficient narrowband technology, the private land mobile radio community is prepared to expend the resources necessary to ease congestion on these very heavily occupied bands.

To implement the transition to spectrally-efficient narrowband technology the Commission required 12.5 kHz bandwidth for all type-accepted equipment manufactured after February 14, 1997.<sup>3</sup> As a result, all major manufacturers of two-way radio equipment retooled their manufacturing facilities and began to offer 12.5 kHz bandwidth equipment. Two-way radio licensees -- in expectation of the availability of spectrally-efficient narrowband equipment -- put off equipment purchases, and delayed upgrades to their existing systems.

However, more than a year after Commission-mandated narrowband equipment has entered the marketplace, end-users are unable to integrate spectrally-efficient equipment into their systems

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<sup>2</sup> 47 C.F.R. § 90.175(b).

<sup>3</sup> See 47 C.F.R. § 90.203(j)(2)(i).

because of the Commission's failure to fully implement the low power migration plan. The result of this inaction has been the massive loss of opportunity costs for equipment manufactures, radio-dealers, and end-users -- who represent the entire spectrum of business and industry.


ITA believes that it is within the Commission's authority -- and consistent with the directives of section 11 of the Telecommunications Act -- to publish an *Errata* to the *Second Report and Order*, removing Sections 90.267(a)(3) and (4) of the Commission's rules. The removal of these sections would permit the full implementation of the LMCC Low Power Pool Consensus Plan, and is the logical outgrowth of the *Second Report and Order*. Because this *Errata* would be subject to the same reconsideration period as any other Commission item, any party that felt that it would be negatively impacted by the removal of the restrictions on low power operation would have an opportunity to voice its concerns to the Commission.

Finally, ITA is aware that two manufacturers of medical telemetry equipment oppose the LMCC plan. ITA is also aware that the Commission is currently trying to resolve issues surrounding interference suffered by medical telemetry operations from DTV operators, and that the resolution of this issue may further delay the implementation of the low power plan. From ITA's perspective, the development of the DTV interference problem presents a perfect opportunity for the Commission to resolve the outstanding 450-470 MHz low power issues.

Medical telemetry devices currently operating on TV channels scheduled for DTV build out, or 450-470 MHz offsets are eventually going to have to migrate. Medical telemetry systems on DTV channels may migrate to any unoccupied TV channels between 7-46,<sup>4</sup> and medical telemetry systems on the 450-470 MHz offsets may migrate to the channels set aside for low power operation in the LMCC plan. However, if the Commission resolves the DTV issue before it resolves the 450-470 MHz issue, medical telemetry operators on the DTV channels could conceivably migrate to the 450-470 MHz offsets, only to be forced to migrate again.

ITA believes that this undesirable outcome can be avoided by the immediate recognition and full implementation of the LMCC's Low Power Pool Plan. If you have any questions regarding these or any other matters that you believe I may be able to assist you with, please do not hesitate to contact me at your convenience.

Sincerely,



John Kneuer

cc: Office of the Secretary

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<sup>4</sup> See *Report and Order*, (FCC 97-379), ET Docket No. 95-177, (rel. October 20, 1997).